IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 1481 of 2006()

CC.1/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MANNARKAD

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PETITIONER: 1ST ACCUSED:

MAMMEN MATHEW,
EDITOR, MALAYALA MANORAMA, KOTTAYAM-686001.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: COMPLAINANT AND STATE:

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1. M.N. RADHAKRISHNAN,
S/O. M.V. NEELAKANDA IYER, AGED 44 YEARS,
BRANCH MANAGER, UNITED INDIA INSURANCE COMPANY LTD
BRANCH OFFICE, MANNARKKAD (RESIDING AT XII/37-A,
"SARANG", AARAKURISSI, MANNARKKAD).

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.T.GOPALAKRISHNAN
SRI.T.J.LAKSHMANAN IYER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18-09-2007, THE COURT ON 15-10-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. M.C. NO. 1481 of 2006

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Dated: 15th day of October 2007

ORDER

In this petition filed under Sec. 482 Cr.P.C. the petitioner (Mammen Mathew) who is the Editor of Malayala Manorama, Kottayam, seeks to quash Ananexure-A complaint dated 15-3-2006 and all further proceedings in C.C. No. 1/2006 on the file of the J.F.C.M., Mannarkkadu. The above case arose out of a private complaint filed by the first respondent herein (M.N. Radhakrishnan) alleging the commission of an offence under Sec. 499 I.P.C. and punishable under Sec. 500 I.P.C.

THE COMPLAINT

2. The averments in the above private complaint a copy of which has been produced as Annexure A can be summarised as follows:-

The complainant is the Manager of the Mannarkkad Branch of United India Insurance Company Limited. He was on leave for the period between 11/4/2005 and 24-4-2005 and 26-04-2005 and 6-5-2005. At the time of entering on leave the complainant had, as usual, entrusted the keys of the branch office with the Senior Assistant.

While the complainant was on leave as aforesaid a news item was published in the Malayala Manoarama daily dated 27-4-2005 of which the first accused s the Editor AND responsible for selection of news under the Press and Registration of Books Act. The said news item read as follows:

ഇൻഷുറൻസ് മാനേജറെ

ഘരാവോ ചെയ്ത ു: : മണ്ണാർക്കാട്:

അക്കൗണ്ടിൽ ക്രമക്കേട് കാണിച്ചശേഷം കംപ്യൂട്ടർ സിസ്റ്റം തകരാറാക്കി എന്നാരോപിച്ചു യുണൈറ്റഡ് ഇന്ത്യ ഇൻഷുറൻസ് കംപനി മണ്ണാർക്കാട് ബ്രാഞ്ച് മാനേജരെ ജീവനക്കാർ ഘരാവോ ചെയ്ത ു. കഴിഞ്ഞ പതിനഞ്ച് ദിവസം ലീവിലായിരുന്ന മാനേജർ ലീവ് സമയത്ത് ഓഫീസിലെത്തി കംപ്യൂട്ടർ തകരാറിലാക്കുകയായിരുന്നുവെന്ന് ജീവനക്കാർ പറഞ്ഞു. ഏജന്റ് കമ്മീഷനിൽ കൃത്രിമം കാണിച്ചതായും ജീവനക്കാർ ആരോപിച്ചു. മാനേജർ എം. എൻ. രാധാകൃഷ്ണനെ സ്ഥാനത്ത് നിന്ന് നീക്കി വിശ്വനാഥന് ചുമതല നൽക ി. കംപ്യൂട്ടറുകൾ തകരാറിലായതിനാൽ ഇൻഷ്വറൻസ് പുതുക്കലും മറ്റും ഇപ്പോൾ മണ്ണാർക്കാട് ബ്രാഞ്ചിൽ നടക്കുന്നില്ല.

ഇത് ഇടപാടുകാരെ ദുരിതത്തിലാക്ക ി. പാലക്കാട്, പെരിന്തൽമണ്ണ ബ്രാഞ്ചുകളിലാണ് ഇടപാടുകൾ നടത്തുന്നത ്. ജീവനക്കാരായ മധുകിഷോർ, നന്ദകുമാർ, രാമു, മുരളീകൃഷ്ണൻ എന്നിവർ നേതൃത്വം നൽക ി. രണ്ട് മാസത്തെ ഡാറ്റകൾ മുഴുവനും നശിച്ചതായി ജീവനക്കാർ പറഞ്ഞു. അധികസമയം ജോലി ചെയ്ത് ജീവനക്കാർ ഡാറ്റകൾ രണ്ടാമത് കംപ്യൂട്ടറിൽ കയറ്റുകയാണ്.

The above news item is absolutely baseless and has been falsely created. The above news has the sure tendency of causing extreme mental agony and humiliation to the complainant. It has the effect of lowering the reputation of the complainant among the public, among

the policy holders of the company and among his co-workers. The complainant was not gheravoed by the employees as alleged in the news item. The complainant had absolutely nothing to do with the news that the computer system in the office had been corrupted. During that period the complainant was on leave. The further statements in the news item that the complainant had committed irregularities in the account and had defalcated the agency commission etc. are absolutely false and calculated to humiliate the complainant. On reading the news which proceeds to say that employees by name Madhukishore, Nandakumar, Ramu and Muraleekrishnan etc. were giving leadership for the agitation and that the employees alleged that during the period in which the complainant was on leave, he had come to the office and corrupted the computer installed therein, the complainant issued lawyer notice to all the aforementioned employees. The complainant had also informed the Malayala Manorama that the aforementioned news item was false and had demanded the Malayala Manorama to apologise for the false news published in their daily and to make amends by publishing another news item to the effect that the offending news was untrue. Except the 2nd accused (Ramu) the other three employees sent replies to the effect that they had absolutely no role to play in the publication of the offending news item and that the Malayala Manorama daily dated 27-4-2005 had published another news item to the effect that the employees had not gheravoed the

complainant. Subsequently, the complainant caused a lawyer notice to be issued to the first accused Editor calling upon him to insert an apology in the front page of Malayala Manoarama to the effect that the news item published on 9-6-2005 was published without any basis and tendering apology to the complainant. But the first accused caused a reply to be sent stating that the news item was published on the basis of information received from reliable sources and at the time when the incident referred to in the news item took place, the reporter of Malayala Manorama was present, that the news item was published in good faith and in public interest, that pursuant to the news item the complainant had contacted the Palakkad Bureau of Manorama and that in the daily dated 28-4-2005 the protest voiced by the complainant was also published. Even though the complainant had informed the first accused that the news item contained false and unfounded allegations inserted without taking due care to ascertain the truth of the allegations and that the complainant had convinced the Palakkad Bureau of the daily through the union of insurance officers that the news item was published without any reasonable basis, except publishing a news item that the complainant had informed that the allegations of the employees were untrue, the first accused did not do anything else. The complainant was not removed from his post as alleged in the offending news item. Malayala Manoram of which the first accused is the Editor is a daily having wide

circulation both inside the State of Kerala as well as outside. On account of the unfounded news item published against the complainant he has suffered extreme mental agony and humiliation. His esteem among the public at large, among the policy holders, relatives and even in his own establishment has been lowered considerably. Out of the four employees referred to in the news item all except the 2nd accused had informed the complainant in writing that they had absolutely no connection whatsoever with regard to the news item. Eventhough the 2nd accused received the notice, he has not chosen to send a reply. The complainant, therefore is under the impression that the 2nd accused could be the person responsible for furnishing the information in the news item and he is, therefore, made as 2nd accused in the case. The first accused is the Editor of Malayala Manorama Daily and the entire responsibility for publishing news as per the provisions of the Press and Registration of Books Act is vested in the first accused. The accused have thus committed an offence under Sec. 499 I.P.C. and punishable under Sec. 500 I.P.C. This Court may, therefore, issue summons to the accused who may be tried for the aforesaid offence and properly punished.

THE COGNIZANCE

3. After recording the sworn statement of the complainant the learned Magistrate took cognizance of the offence and registered the case as C.C. No. 1 of 2006 and issued process to the accused

including the revision petitioner/first accused. It is the said cognizance and the consequential proceedings which are assailed in this revision by the first accused.

4. I heard Sr. Advocate Sri. K.P. Dandapani appearing for the petitioner and Advocates T. Gopalakrishnan and Lakshmana Iyer, the learned counsel for the Ist respondent/complainant.

COMPLAINANT'S ARGUMENTS

5. The learned counsel appearing for the first respondent/complainant made the following submissions before me opposing the revision:-

Eventhough Annexure B news item was false and tending to lower the reputation of the complainant in the estimation of others, the Malayala Manorama of which the first accused is the Editor has not chosen to tender any apology. On the contrary, he has attempted to justify the defamatory news item. In Annexure E reply sent by the first accused to Annexure D lawyer notice, the first accused would say that the correspondent of the Malayala Manorama Daily was a witness to the entire incident thereby taking the stand that the incident reported in Annexure B news item is true. So, this is a matter for evidence and the case has to go for trial. By Annexure C clarificatory news item the first accused has not made any amends to the libellous news item but instead, would report that the complainant contacted to to the daily and denied the allegations

made against him in the earlier news item. This is not a conduct indicating contrition on the part of the first accused. The learned Magistrate was perfectly justified in taking cognizance of the offence and issuing summons to the accused.

JUDICIAL RESOLUTION

6. I am afraid that I cannot agree with the above submissions. Annexure-B offending news item in the Malayala Manorama daily dated 27-4-2005 is the same as Annexure R1(d) produced by the complainant. A true English translation of the text of Annexure B news item is to the following effect :-

> "Insurance Manager Gheravoed - Mannarkkad:
>
> The Mannarkkad Branch Manager of United India Insurance Company was gheravoed by the employees on the allegation that after committing irregularities in the accounts he had corrupted the computer system. The employees told Malayala Manorama that the Manager who was on leave for the past 15 days had come to the office and had corrupted the computer system. The employees had also alleged that the Manager had misappropriated the agency commission. M.N. Radhakrishnan, the Manager was removed from his post and the charge of his office was given to Viswanathan. On account of the computers getting corrupted, renewal of insurance and allied operations are not done in the Mannarkkad branch but are carried on in the Palakkad and Perinthalmanna branches. This has caused untold hardship to the customers. Employees by name Madhukishore, Nandakumar, Ramu, Muraleekrishnan etc. gave leadership to the agitation. The employees told the Malayala Manorama that the datas stored in the computers over a period of two months had been destroyed. The employees are doing overtime work

for uploading the datas again".

7. Thereafter the complainant got in touch with the Malayala Manorama and voiced his protest resulting in the first accused issuing Annexure C news item in the Malayala Manorama Daily dated 28-4-2005. It reads as follows:

"ജീവനക്കാർ ഘെരാവോചെയ്തിട്ടില്ലെന്ന്:

പാലക്കാട്:: - ജീവനക്കാർ തന്നെ ഘെരാവോ ചെയ്തിട്ടില്ലെന്ന്:യുണൈറ്റഡ് ഇൻഡ്യ ഇൻഷുറൻസ് കംപനി മണ്ണാർക്കാട് ബ്രാഞ്ച് മാനേജർ എം .എൻ.രാധാകൃഷ്ണൻ അറിയിച്ചു.

ഏജൻറ്സ് കമ്മീഷനിൽ കൃത്രിമം കാണിച്ചു, അക്കൗണ്ടിൽ ക്രമക്കേട് കാണിച്ചു, കംപ്യൂട്ടർ സംവിധാനം തകരാറിലാക്കി, തുടങ്ങിയ ജീവനക്കാരുടെ ആരോപണങ്ങൾ വാസ്തവവിരുദ്ധമാണെന്ന് അദ്ദേഹം അറിയിച്ചു.

15 ദിവസത്തെ അവധിയിൽ പ്രവേശിക്കുന്നതിന് മുൻപ് താൻ ഓഫീസിൻെറ രണ്ട് താക്കോലുകളും കീഴുദ്യോഗസ്ഥർക്ക് കൈമാറിയിരുന്നു. അദ്ദേഹം പറഞ്ഞു"

A true English translation of the text of the above news item is as follows:-

"Employees did not gheravoe - Palakkad:

M.N. Radhakrishnan, the Mannarkkad Branch Manager of United India Insurance Company informed the Malayala Manorama that he was not gheravoed by the employees . He had also informed that the allegation of the employees that agents commission was misappropriated, defalcation of accounts was committed and the computer system was corrupted etc. was false and baseless. He had also informed that before entering on leave for 15 days he had

entrusted both the keys of the office with his subordinates".

8. The first respondent/complainant has not taken exception to Annexure C new item inserted pursuant to the protest voiced by him before the revision petitioner/first accused. This means that he is also admitting that the employees had levelled the aforementioned allegations against him. A reading of Annexure B new item will show that the said news item was published on the basis of reliable information collected from the employees of the Mannarkkad branch of United India Insurance Company. The fact that employees had levelled such an allegation against the complainant is a matter which is reiterated in Annexure C subsequent news item published consequent on the protest voiced by the complainant who has not objected to the said news report. If so, Annexure B offending news item can only be said to have been published in good faith and in public interest. Except faithfully reporting the information supplied by the employees of the Mannarkkad Branch of the Insurance Company, the revision petitioner/first accused cannot be said to have harboured any malice or ill-will either against the complainant or against the insurance company in publishing the said news item. After publishing the news items when the complainant contacted the Malayala Manorama office and denied the allegations made therein, on the very next day the statement given by the complainant was also

published in the Malayala Manorama daily dated 28-4-2005 (Annexure - C) with equal importance. But the complainant appears to be dissatisfied with Annexure C subsequent publication and pursued his persecutory tirade against Malayala Manorama by causing a lawyer notice to be issued to the revision petitioner as well as to the four employees named in Annexure B news item. When the complainant himself has not taken exception to the statement in Annexure C subsequent news item based on his own statement that the allegation made by the employees against him was false and unfounded, he cannot take the position that since three out of the four employees had denied in their reply notice of having given information to the daily raising allegations against the complainant, the aforesaid three employees could not have given the information to the Press.

9. The offence of defamation consists of three essential ingredients, namely,

> ***(1)*** *making or publishing an imputation concerning a person*
>
> ***(2)*** *such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations and*
>
> ***(3)*** *the said imputation must have been made with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned.*

(Vide Sunilakhya Chowdhury v. H.M. Jadwet and another - AIR

1968 Calcutta 266). Thus, the mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. By no stretch of imagination could it be said that Annexure B news item was published with the intention of harming the reputation of the complainant. If it were so, then as soon as the complainant voiced his protest, the first accused would not have published Annexure C news item faithfully conveying to the public what the complainant had represented to the Malayala Manorama daily. Merely because in the reply to the lawyer notice the first accused had informed the complainant that the correspondent of Malayala Manorama was present when the agitating employees gave the information to Malayala Manorama, it cannot be said that a case has been made out for evidence. The important aspect to be examined is as to whether Annexure A complaint together with the news item prima facie makes out the offence under Sec. 499 I.P.C. A reading of Annexure B news item does not give the impression that it was actuated by any malevolent motive or a desire to calumniate or cast aspersions on the complainant or to expose him to public ridicule or to inflict even the slightest injury to his reputation. If so, it will be an abuse of the process of court to drag the first accused to face the ordeal of a trial.

10. It is also doubtful whether a complaint of defamation would lie against the first accused Editor. Ext.R1 (d) containing the offending news item is the relevant page of the Malayala Manorama Daily dated 27-4-2005. At the top of the relevant page of the daily is given the names of Associate Editor, Managing Editor, Editor, Chief Editor etc.. After the names of the last two functionaries it is printed as follows:-

"Responsible for selection of news item under the P.R.B. Act"

In the complaint both at the place where the name and other particulars of the first accused are mentioned as well as in paragraph 2, it is stated that the first accused Mammen Mathew who is the Editor of Malayala Manorama is responsible for selection of news under the P.R.B. Act. If his responsibility is only in the matter of selection of news item, then he cannot be said to have committed the offence of defamation under Sec. 499 I.P.C. as per which the making or publication of the imputation alone will constitute the offence. Selection of the news item cannot amount to making of the news which is already made and kept available for selection. Similarly, selection of the news cannot amount to publication of the news as well. In Annexure R1 (d) it is printed in unequivocal terms that ***the daily is printed and published by one Jacob Mathew*** who is not made an accused in the case. Thus, even going by the

averments in the complaint, the Editor is not responsible either for making or publishing the news. If only, the first accused has a role in the making or publishing of the news item, can he be prosecuted for the offence. Hence, even if the complaint as well as the offending news item could constitute an imputation made with the intention of harming the reputation of the complainant, such complaint would not be maintainable against a person like the first accused who had no role either in the making or in the publishing of the imputation.

For the foregoing reasons, Annexure A complaint which does not make out the alleged offence cannot be allowed to stand. It is accordingly quashed so far as it relates to the first accused. Consequently, the proceedings initiated as C.C. 1/2006 on the file of the J.F.C.M. Mannarkkad is also quashed so far as it relates to the first accused.

V.RAMKUMAR, (JUDGE)

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